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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

ROSARIO SHORES PROPERTY OWNERS)	
ASSOCIATION, et al.,)	
)	SHB No. 90-66
Appellants,)	
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
LYNN CARLTON and SAN JUAN COUNTY,)	AND ORDER
)	
Respondents.)	

This matter came on for hearing before the Shorelines Hearings Board, William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Judith Bendor, Chair, Harold S. Zimmerman, Annette S. McGee, Nancy Burnett, Martin Carty and Nelson Graham.

The matter is a request for review of a shoreline substantial development permit granted by San Juan County to Lynn Carlton.

Appearances were as follows:

- A. Appellants by Thomas C. Evans, Attorney at Law;
- B. Respondent Lynn Carlton by John O. Linde, Attorney at Law;
- C. Respondent San Juan County by Peter L. Buck and Jay P. Derr, Attorneys at Law and Paul McIlrath, Deputy Prosecuting Attorney.

The hearing was conducted at Friday Harbor on May 23, 1991.

Gene Barker and Associates provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. The Board viewed the site of the proposal in the company of Judge Harrison,

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1 and the parties. From testimony heard and exhibits examined, the
2 Shorelines Hearings makes these

3 FINDINGS OF FACT

4 I

5 This matter arises on Orcas Island, near Rosario Resort, in San
6 Juan County. Respondent Lynn Carlton purchased lot 4 of Rosario
7 Shores, a private subdivision about 1/4 mile from the resort. This
8 case concerns that lot.

9 II

10 On June 5, 1989, the San Juan County Health Department granted
11 Ms. Carlton's application for a sewage permit. Originally sewage
12 disposal on lot 4 was also to include sewage routed from lot 1, which
13 is also owned by Ms. Carlton. That was changed on September 14, 1990
14 by County Health Department approval of a separate sewage disposal
15 system for lot 1. The County Health Department has approved on-site
16 sewage disposal from a single family residence on lot 4.

17 III

18 The area landward of the ordinary high water mark on lot 4 is
19 designated "suburban" by the San Juan County Shoreline Master Program
20 (SJCSMP). Residential development is a permitted use in the suburban
21 environment, subject to regulations and policies within the SJCSMP.
22 Section 16.40.517 of SJCSMP, p. 67 "Suburban".
23
24
25
26

IV

On May 2, 1990, Ms. Carlton applied to San Juan County for a shoreline substantial development permit to construct a single family residence on lot 4. This application was classified by the County as exempt from the State Environmental Policy Act. The shoreline substantial development permit was approved on September 11, 1990. The approval was appealed to this Board on October 17, 1990.

V

The concern of appellants, Rosario Shores Property Owners Association, et.al., is with the on-site sewage disposal proposed by respondent Carlton on lot 4.

VI

Mr. Gene Baney has developed a residence on lot 5 adjacent to Ms. Carlton's lot 4 at issue. Mr. Baney's on-site sewage disposal system (septic tank and drainfield) has not been satisfactory to Mr. Baney, a member of appellant Owners Association. The septic drainfield has effluent which collects at land surface. However, the Baney system has been described in testimony by appellant's own expert as lacking a customary cover of topsoil over the drainfield. Moreover the San Juan County Health Department has advised Mr. Baney that adding six inches of topsoil to the drainfield area would solve the problem. The natural soil of lot 5 is well-drained gravelly, loamy, sand. The problem, which topsoil would likely solve, is due to compact sandy loam imported to Mr. Baney's drainfield area in the past.

VII

In evidence by appellant's expert, the proposed drainfield area on Ms. Carlton's lot 4 consists of clay, and involves bedrock at a depth of less than a shovel handle (about three feet). This, however, is not the case. We find that the drainfield area consists of loose dirt to a depth of at least seven feet and doesn't contain enough clay to significantly impair operation of a septic drainfield. Such soil is among the best in San Juan County for locating a septic drainfield. It is probable that such a drainfield would treat and dispose of sewage without any significant adverse effect upon the land, water or environment in general.

VIII

Appellants have not shown any significant adverse environmental effect either from the proposed lot 4 septic system alone or in combination with other septic systems in the area.

IX

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

At the close of appellant's case respondents' Motion to Dismiss was granted as to 1) aesthetics, 2) setbacks and 3) whether proceedings before San Juan County were sufficient to establish jurisdiction in this Board.

1 II

2 We review the shoreline permit at issue for consistency with the
3 applicable master program (SJCSMP) and the Shoreline Management Act.
4 RCW 90.58.140(2)(b). The Act, at RCW 90.58.020, provides for
5 management of the shorelines of the state by planning for and
6 fostering all reasonable and appropriate uses. In the context of
7 residential or other sewage disposal systems, the Act states that:

8 " . . . uses shall be preferred which are
9 consistent with control of pollution and prevention of
10 damage to the natural environment.

11 and also that:

12 "Permitted uses in the shorelines of the state
13 shall be designed and conducted in a manner to
14 minimize, insofar as practical, any resultant damage to
15 the ecology and environment of the shoreline area and
16 any interference with the public's use of the water.

17 We have jurisdiction to consider the environmental effects of sewage
18 disposal proposed for shorelines of the state. See, Murden Cove
19 Preservation Association v. Kitsap County, SHB Nos. 87-4 and 87-11
20 (1987).

21 III

22 Respondent Carlton urges that County septic system approvals are
23 appealable to the State Pollution Control Hearings Board (PCHB). On
24 the facts of this case that does not appear to be so, as no action of
25 the State Department of Ecology is involved nor has authority been
26

1 cited for such an appeal. We conclude that this Board has
2 jurisdiction to review the effects on sewage disposal in a shoreline
3 case even were review by the PCHB possible.

4 IV

5 The SJCSMP provides that:

6 "Drainage and surface runoff from residential areas
7 shall be controlled so that pollutants will not be
8 carried into water bodies." Section 16.40.517 of SJCSMP
at p.66, paragraph 13.

9 Also, the SJCSMP at Section 16.40.601-603, p. 75, adopts the Shoreline
10 Management Act's use preferences for shorelines of statewide
11 significance. In this case, the area waterward of the ordinary high
12 water mark is a shoreline of statewide significance. Appellants have
13 not shown the proposed residence and septic system to be inconsistent
14 with these requirements, in particular, nor with the greater Shoreline
15 Management Act or SJCSMP.

16 V

17 The proposed development is for fewer than four dwelling units
18 and is exempt from the State Environmental Policy Act.
19 WAC 197-11-800(1)(b)(i) and -(2)(d).

20 VI

21 Any Finding of Fact which is deemed a Conclusion of Law is hereby
22 adopted as such.

23 From these Conclusions of Law, the Board enters the following
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
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ORDER

The shoreline substantial development permit granted by San Juan County to Lynn Carlton for lot 4 of Rosario Shores subdivision is, hereby, affirmed.

DONE at Lacey WA, this 6th day of June, 1991.

SHORELINES HEARINGS BOARD

Judith A. Bendor
JUDITH A. BENDOR, Chair

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

Annette S. McGee
ANNETTE S. MCGEE, Member

Nancy Burnett
NANCY BURNETT, Member

Mart Cart
MARTIN CARTY, Member

Nelson A. Graham
NELSON GRAHAM, Member

William A. Harrison
WILLIAM A. HARRISON
Administrative Appeals Judge

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